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FILED

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

DEC 04 2002

**SECRETARY, BOARD OF
OIL, GAS & MINING**

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IN THE MATTER OF THE PETITION	:	STIPULATION AND JOINT
FILED BY THE DIVISION OF OIL,	:	MOTION AND ORDER TO
GAS AND MINING, FOR AN ORDER	:	DISMISS AGENCY ACTION
TERMINATING THE SELF BONDING	:	AND TO TERMINATE SELF
AND INDEMNITY AGREEMENT AND	:	BONDING AND INDEMNITY
REQUIRING UTELITE CORPORATION	:	AGREEMENT
TO POST AN ADEQUATE REPLACEMENT :		
RECLAMATION SURETY OR SUSPEND	:	DOCKET NO. 2002-021
MINING OPERATIONS; UTELITE MINE,	:	FILE NO. M/043/004
UTELITE CORPORATION, SUMMIT	:	
COUNTY, UTAH	:	

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STIPULATION

The Division of Oil, Gas and Mining ("Division"), and Utelite Corporation ("Utelite"), operator of the Utelite Mine, intending to fully and completely resolve the above entitled agency action, HEREBY STIPULATE, AGREE AND REPRESENT as follows:

1. Utelite, the Division and the Board of Oil, Gas and Mining ("Board") are parties to that certain Self Bonding and Indemnity Agreement dated January 25, 1990 (the "Self Bonding Agreement"), whereby Utelite provided surety for reclamation of the Utelite Mine under the requirements of the Utah Mined Land Reclamation Act and regulations promulgated thereunder.
2. Utelite has fully executed and submitted to the Division a revised Reclamation Contract ("Reclamation Contract") dated December 4th, 2002, in a form acceptable to the Division based on the current estimate of the reclamation costs necessary to complete reclamation of the Utelite Mine. The Reclamation Contract is attached hereto as Exhibit A.
3. At the behest of Utelite, Wells Fargo Bank has issued to the Division an irrevocable letter of credit ("Letter of Credit") dated December 2nd, 2002, in a form and amount approved by the Division as acceptable surety for the completion of the reclamation work required at the Utelite Mine under the Reclamation Contract. The Letter of Credit is attached hereto as Exhibit B.

4. The Division and Utelite believe the Reclamation Contract and Letter of Credit meet the requirements for a reclamation surety as required by the Utah Mined Land Reclamation Act and Administrative Rules.
5. The Self Bonding Agreement should be terminated and Utelite should have no further obligations thereunder.

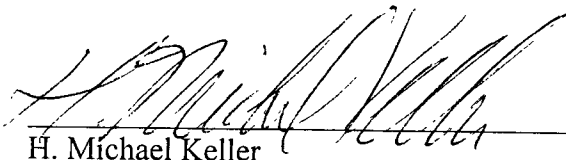
JOINT MOTION

NOW THEREFORE, the Division and UTELITE jointly move the Board for an Order in the form attached hereto dismissing with prejudice the above matter and agency action based on the Reclamation Contract and Letter of Credit submitted by Utelite as replacement surety, terminating the Self Bonding Agreement, and relieving Utelite from any further obligations under the Self Bonding Agreement.

Dated this 3rd day of December, 2002.



Steven F. Alder, Assistant Attorney General
Counsel for Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801



H. Michael Keller
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
Salt Lake City, Utah 84144
Counsel for Utelite Corporation

BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

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DEC 10 2002

IN THE MATTER OF THE PETITION :
FILED BY THE DIVISION OF OIL, :
AS AND MINING, FOR AN ORDER :
TERMINATING THE SELF BONDING :
AND INDEMNITY AGREEMENT AND :
REQUIRING UTELITE CORPORATION :
TO POST AN ADEQUATE REPLACEMENT :
RECLAMATION SURETY OR SUSPEND :
MINING OPERATIONS; UTELITE MINE, :
UTELITE CORPORATION, SUMMIT :
COUNTY, UTAH :

ORDER

**SECRETARY, BOARD OF
OIL, GAS & MINING**

DOCKET NO. 2002-021

FILE NO. M/043/004

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This matter having come before the Board on December 4, 2002, and the Board having reviewed the Stipulation and Joint Motion of the parties dated December 4, 2002, and the Board having been fully advised in the premises, and good cause appearing for granting said motion,

IT IS HEREBY ORDERED:

1. The Reclamation Contract and the Letter of Credit, attached hereto as Exhibit A and Exhibit B, respectively, and approved by the Division will replace the Self Bonding and Indemnity Agreement dated January 25, 1990 (the "Self Bonding Agreement") entered into by and between Utelite, the Division, and the Board, whereby Utelite provided self bonding surety for the Utelite Mine and will satisfy the requirements of the Utah Mined Land Reclamation Act.
2. The Self Bonding Agreement and any prior reclamation contracts between Utelite and the Division with respect to the Utelite Mine, and Utelite's obligations thereunder, are hereby terminated and replaced with the Reclamation Contract and the Letter of Credit.
3. This matter and agency action are hereby dismissed with prejudice.

DATED this 10th day of December, 2002.

BY THE BOARD OF OIL, GAS AND MINING

Approved as to Form:

H. Michael Keller, counsel for Utelite

Elise L. Erler

Elise L. Erler, Chairman

CERTIFICATE OF MAILING

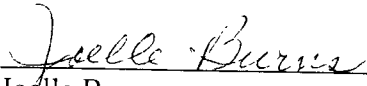
I hereby certify that I caused a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION AND ORDER TO DISMISS AGENCY ACTION AND TERMINATE SELF BONDING AND INDEMNITY AGREEMENT** to be mailed by first class mail, postage prepaid, the 2nd day of December, 2002 to:

Carsten Mortensen
Utelite Corporation
P.O. Box 387
Coalville, Utah 84017

H. Michael Keller, Esq.
Van Cott, Bagley, Cornwall & McCarthy
50 South Main Street, Suite 1600
P.O. Box 45340
Salt Lake City, Utah 84145-0340

Steven Alder, Esq.
Assistant Attorney General
Department of Natural Resources
Division of Oil, Gas & Mining
1594 West North Temple, Suite #300
Salt Lake City, Utah 84114

Kurt Seel, Esq.
Assistant Attorney General
Department of Natural Resources
Board of Oil, Gas & Mining
160 East 300 South – 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857



Joelle Burns
Minerals Engineering Technician

STATE OF UTAH
DEPARTMENT OF NATURAL RESOURCES
DIVISION of OIL, GAS and MINING
1594 West North Temple Suite 1210
Box 145801
Salt Lake City, Utah 84114-5801
(801) 538-5291
Fax: (801) 359-3940

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RECLAMATION CONTRACT

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DIV. OF OIL, GAS & MINING

For the purpose of this RECLAMATION CONTRACT the terms below are defined as follows:

"NOTICE OF INTENTION" (NOI): (File No.) M/043/004
(Mineral Mined) "Mancos" Shale

"MINE LOCATION":
(Name of Mine) Utelite Mine
(Description) Approximately 1/2 mile west of
Rockport Reservoir and north of
the town of Peoa, Utah

"DISTURBED AREA":
(Disturbed Acres) 48.7
(Legal Description) (refer to Attachment "A")

"OPERATOR":
(Company or Name) Utelite Corporation
(Address) P.O. Box 387
6375 W. Three Mile Canyon Road
Coalville, UT 84017
(Phone) (435) 467-2800

"OPERATOR'S REGISTERED AGENT":

Name)	<u>Lynn M. Carlson</u>
(Address)	<u>4505 S. Wasatch Blvd. Suite 300</u>
	<u>Salt Lake City, UT 84124</u>
(Phone)	<u>(801) 277-1040</u>
"OPERATOR'S OFFICER(S)":	<u>Carsten N. Mortensen, President</u>
	<u> </u>
	<u> </u>
SURETY":	
(Form of Surety - Attachment B)	<u>Letter of Credit</u>
"SURETY COMPANY":	
(Name, Policy or Acct. No.)	<u>Wells Fargo Bank, N.A.</u>
	<u> </u>
"SURETY AMOUNT":	
(Escalated Dollars)	<u>\$147,900.00</u>
"ESCALATION YEAR":	<u>2007</u>
"STATE":	<u>State of Utah</u>
"DIVISION":	<u>Division of Oil, Gas and Mining</u>
"BOARD":	<u>Board of Oil, Gas and Mining</u>
ATTACHMENTS:	
A "DISTURBED AREA":	
B "SURETY":	

This Reclamation Contract (hereinafter referred to as "Contract") is entered into between Utelite Corporation the "Operator" and the Utah State Division of Oil, Gas and Mining ("Division").

WHEREAS, Operator desires to conduct mining operations under Notice of Intention (NOI) File No. M/043/004 which has been approved by the Utah State Division of Oil, Gas and Mining under the Utah Mined Land Reclamation Act, Sections 40-8-1 et seq., Utah Code Annotated, (1953, as amended) (hereinafter referred to as "Act") and implementing rules; and

WHEREAS, Operator is obligated to reclaim that area described as the Disturbed Area as set forth and in accordance with Operator's approved Reclamation Plan, and Operator is obligated to provide surety in form and amount approved by the Division, to assure reclamation of the Disturbed Area.

NOW, THEREFORE, the Division and the Operator agree as follows:

1. Operator agrees to conduct reclamation of the Disturbed Area in accordance with the Act and implementing regulations, the original Notice of Intention dated 1/13/78, and the original Reclamation Plan dated 1/13/78. The Notice of Intention as amended, and the Reclamation Plan, as amended, are incorporated by this reference and made a part hereof.
2. Concurrent with the execution hereof, Operator has provided surety to assure that reclamation is conducted, in form and amount acceptable to the Division. Such surety as evidenced by the Surety Contract is in the form of the surety attached hereto as Attachment B and made a part hereof. The Surety Contract shall remain in full force and effect according to its terms unless modified by the Division in writing. If the Surety Contract expressly provides for cancellation, then, within 60 days following the Division's receipt of notice that the Surety Company intends to cancel the Surety Contract, the Operator shall provide a replacement Surety Contract in a form and amount reasonably acceptable to the Division. If the Operator fails to provide an acceptable replacement Surety Contract, the Division may (1) make a draw on the entire amount of the letter of credit by presentation of a draft drawn against the Wells Fargo Bank or other entity provided such letter of credit, and hold the funds paid to the Division until a substitute surety is provided or until the reclamation work is satisfactorily completed; or (2) if the Division does not receive payment under the letter of credit in the full amount, order the Operator to cease further mining activities and to begin immediate reclamation of the Disturbed Area.
3. Operator agrees to pay legally determined public liability and property damage claims resulting from mining to the extent provided in Section 40-8-7(1)(e) of the Act.
4. Operator agrees to perform all duties and fulfill all reclamation requirements applicable to the mine as required by the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended.
5. The Operator's liability under this Contract shall continue in full force and effect until the Division certifies that the Operator has reclaimed the Disturbed Area in accordance with the Act and implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended.
6. If reclamation of discrete sections of the Disturbed Area is completed to the satisfaction of the Division, and the Division finds that such sections are severable from the remainder of the Disturbed Area, Operator may request the Division to certify that Operator has reclaimed such discrete sections of the Disturbed Area in accordance with the Act and Implementing rules, the Notice of Intention, as amended and the Reclamation Plan, as amended. If the Division makes such certification, Operator may make request to the Division that the aggregate face amount of the Surety Contract provided pursuant to paragraph 2 be reduced to an amount necessary to provide for

completion of the remaining reclamation. The Division shall hear Operator's request for such reduction in accordance with the Board's Procedural Rules concerning requests for Agency Action.

7. Operator agrees to indemnify and hold harmless the State, Board and the Division from any claim, demand, liability, cost, charge, suit, or obligation of whatsoever nature arising from the failure of Operator or Operator's agents and employees, or contractors to comply with this Contract.
8. Operator may, at any time, submit a request to the Division to substitute surety. The Division may approve such substitution if the substitute surety meets the requirements of the Act and the implementing rules.
9. This Contract shall be governed and construed in accordance with the laws of the State of Utah.
10. If Operator shall default in the performance of its obligations hereunder, Operator agrees to pay all costs and expenses, including reasonable attorney's fees and costs incurred by the Division and/or the Board in the enforcement of this Contract.
11. Any breach that the Division finds to be material of the provisions of this Contract by Operator may, at the discretion of the Division, result in an order to cease mining operations. After opportunity for notice and hearing, the Board of Oil, Gas and Mining may enter an order to revoke the Notice of Intention, order reclamation, or order forfeiture of the Surety Contract, or take such other action as is authorized by law.
12. In the event of forfeiture of the Surety Contract, Operator shall be liable for any additional costs in excess of the surety amount which are required to comply with this Contract. Any excess monies resulting from forfeiture of the Surety Contract, upon completion of reclamation and compliance with this Contract, shall be returned to the rightful claimant.
13. This Contract including the Notice of Intention, as amended and the Reclamation Plan, as amended, represents the entire agreement of the parties involved, and any modification must be approved in writing by the parties involved.
14. Each signatory below represents that he/she is authorized to execute this Contract on behalf of the named party.

OPERATOR:

Utelite Corporation
Operator Name

By Carsten N. Mortensen
Authorized Officer (Typed or Printed)

President
Authorized Officer - Position

Carsten N. Mortensen, President
Officer's Signature

12-4-02
Date

STATE OF Utah)
COUNTY OF Salt Lake) ss:

On the 4th day of December, 2002, Carsten N. Mortensen personally appeared before me, who being by me duly sworn did say that he/she is the President of Utelite Corporation and duly acknowledged that said instrument was signed on behalf of said company by authority of its bylaws or a resolution of its board of directors and said Carsten N. Mortensen duly acknowledged to me that said company executed the same.

Joelle Burns
Notary Public
Residing at SLC Utah

4-4-05
My Commission Expires:



DIVISION OF OIL, GAS AND MINING:

By Lowell P Braxton
Lowell P. Braxton, Director

12-8-02
Date

STATE OF Utah)
COUNTY OF Salt Lake) ss:

On the 21st day of December, 2002, Lowell P Braxton
personally appeared before me, who being duly sworn did say that he, the said
Lowell P Braxton is the Director of the Division of Oil, Gas and Mining,
Department of Natural Resources, State of Utah, and he duly acknowledged to me that
he executed the foregoing document by authority of law on behalf of the State of Utah.



Joelle Burns
Notary Public
Residing at: S L City Ut

April 4, 2005
My Commission Expires:

ATTACHMENT "A"

Utelite Corporation

Operator

Utelite

Mine Name

M/043/004

Permit Number

Summit

County, Utah

LEGAL DESCRIPTION

Include 1/4, 1/4, 1/4 sections, townships, ranges and any other descriptions that will legally determine where disturbed lands are located. Attach a topographic map of suitable scale (max. 1 inch = 500 feet; 1 inch = 200 feet or larger scale is preferred) showing township, range and sections and a clear outline of the disturbed area boundaries tied to this Reclamation Contract and surety.

The detailed legal description of lands to be disturbed includes portions of the following lands not to exceed 48.7 acres under the approved permit and surety, as reflected on the attached map labeled Utelite Mine and dated June 19, 1989:

Portions of the S1/2 of SE1/4 and SE1/4 of SW1/4 - Section 5

and

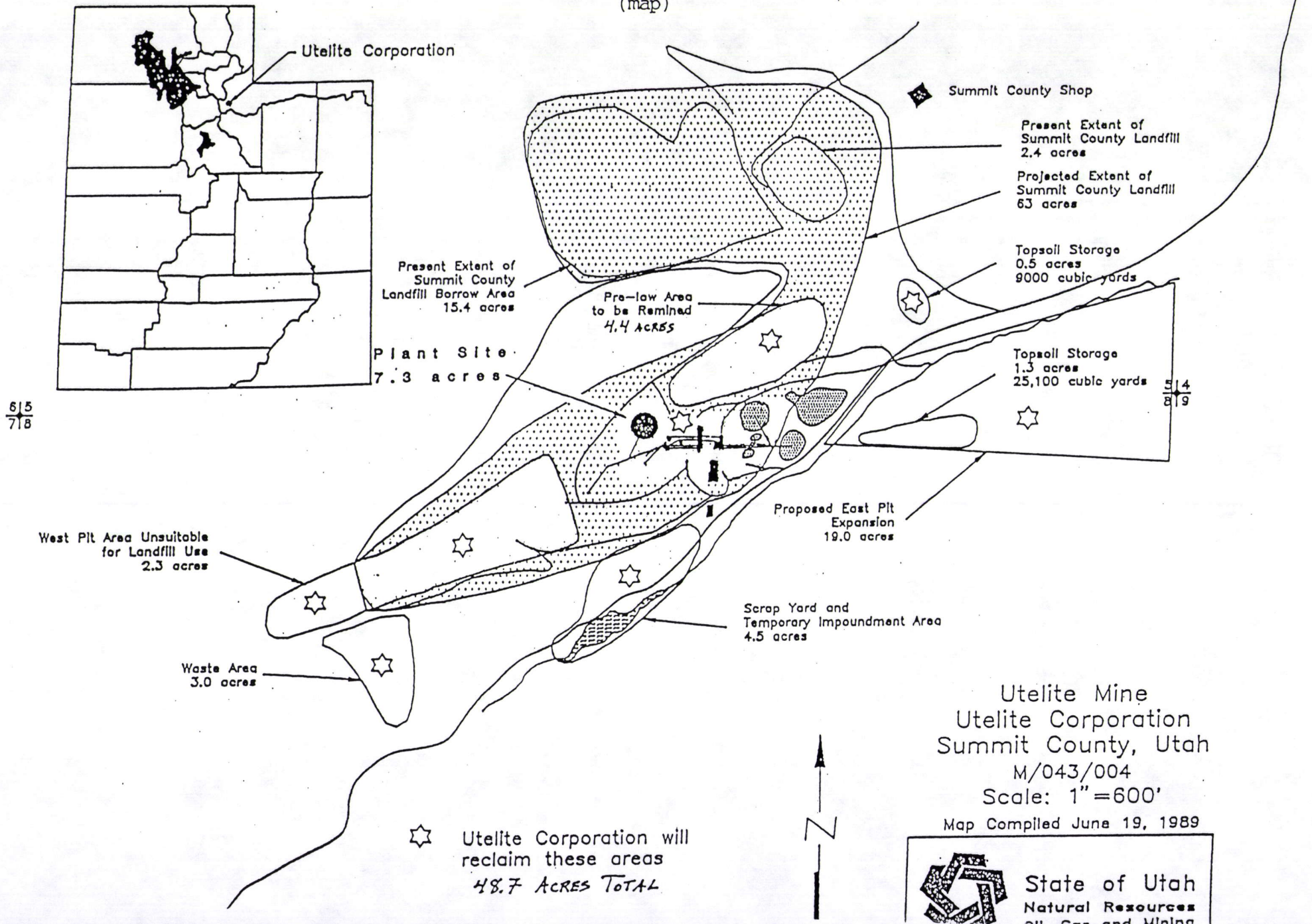
Portions of the N1/2 of NE1/4 and NW1/4 - Section 8

Township 1 South, Range 5 East, SLBM

Disturbed Area Description as of 12/28/90

	<u>Acres</u>
Proposed East Pit Expansion	19.0
Impoundment/Scrap Yard	4.5
Waste Area	3.0
Entire West Pit	10.0
Plant Site	7.3
Pre-law Area, Remined	4.4
Topsoil Storage	0.5
Total	48.7 Acres

Attachment "A"
(map)



6/5
7/8

5/4
8/9



WELLS FARGO BANK, N.A.
TRADE SERVICES DIVISION, NORTHERN CALIFORNIA
525 MARKET STREET, 25TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105
Contact Phone: 1(800) 798-2815 (Option 1)
Email : sftrade@wellsfargo.com

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DIV. OF OIL, GAS & MINING

IRREVOCABLE LETTER OF CREDIT

UTAH DIVISION OF OIL, GAS AND MINING
1594 West North Temple, Suite 1210
Box 145801
Salt Lake City, UT 84114-5801
Attention: Mary Ann Wright

Letter of Credit No. _____
Date: December 2, 2002

Ladies and Gentlemen:

At the request and for the account of Utelite Corporation, P.O. Box 387, Coalville, UT 84017, we hereby establish our Irrevocable Letter of Credit in your favor for an aggregate amount not to exceed One Hundred Forty Seven Thousand Nine Hundred and 00/100's United States Dollars (US\$147,900.00) effective immediately and available with us at our above office by payment of your draft(s) drawn on us at sight in the format attached hereto as *Exhibit A* accompanied by your signed and dated statement worded as follows in the format attached hereto as *Exhibit B*.

Each draft must also be accompanied by the original of this Letter of Credit for our endorsement on this Letter of Credit of our payment of such draft.

Partial and multiple drawings are permitted under this Letter of Credit.

Each draft must be marked "Drawn under Wells Fargo Bank, N.A. Letter of Credit No. _____."

This Letter of Credit expires at our above office on December 2, 2003, but shall be automatically extended, without written amendment, to December 2 in each succeeding calendar year unless we have sent written notice to you at your address above by registered mail or express courier that we elect not to renew this Letter of Credit beyond the date specified in such notice which date, will be December 2, 2003 or any subsequent December 2 and be at least 90 calendar days after the date we send you such notice. Upon our sending you such notice of the nonrenewal of the expiration date of this Letter of Credit, you may also draw under this Letter of Credit by presentation to us at our above address, on or before the expiration date specified in such notice, of your sight draft only in the format attached hereto as *Exhibit A* for the full available amount of this letter of credit.

If any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions even if the number identifies a person or entity different from the intended payee.

We hereby agree with you that each drawing presented hereunder in full compliance with the terms hereof will be duly honored by our payment to you of the amount of such demand, in immediately available funds of Wells Fargo Bank, N.A.:

- (i) not later than 1:00 p.m., San Francisco time, on the second Business Day following the Business Day on which such drawing is presented to us as aforesaid if such presentation is made to us after noon, San Francisco time.

This is an integral part of our Letter of Credit No

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Except as otherwise provided in this Letter of Credit, this Letter of Credit is subject to the Uniform Customs and Practice For Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 (the "UCP") and the laws of the State of Utah, and, in the case of any conflict between such laws and the UCP, the laws of the State of Utah will control.

Very truly yours

WELLS FARGO BANK, N.A.

BY:


(AUTHORIZED SIGNATURE)

SOCCI LOZANO

Exhibit "A"
WELLS FARGO BANK, N.A.
LETTER OF CREDIT NO _____

Wells Fargo Bank, N.A.
Trade Services Division, Northern California
525 Market Street
San Francisco, CA 94105
Attn: Standby Letter of Credit Dept.

SIGHT DRAFT

<u>Date</u>	<u>City, County</u>	<u>Letter of Credit No.</u>
_____	_____	_____

PAY TO THE ORDER OF: _____

_____ (U.S.DOLLARS) (US\$ _____)

Drawn under Wells Fargo Bank, N.A. Letter of Credit No _____ dated December 2, 2002.

The Utah Division of Oil, Gas, and Mining

By: _____
Authorized Signature

Date: _____

EXHIBIT "B"
WELLS FARGO BANK, N.A.
LETTER OF CREDIT NO.

Wells Fargo Bank, N.A.
Trade Services Division, Northern California
525 Market Street
San Francisco, CA 94105

Attn: Manager, Standby Letter of Credit Dept.

Ref: Letter of Credit No

Ladies and Gentlemen:

1. The undersigned, a duly authorized representative of the Utah Division of Oil, Gas, and Mining, hereby certify that (1) the drawing in the amount of {insert \$ amount} by sight draft accompanying this certificate, under Wells Fargo Bank, N.A. Letter of Credit No. _____ dated December 2, 2002 issued by you is permitted under the provision of the Letter of Credit; (2) the Letter of Credit has neither expired nor terminated pursuant to its terms, (3) the amount of the sight draft, together with any amounts previously drawn under the Letter of Credit, does not exceed the Face Amount, or (4) the Utah Board of Oil, Gas and Mining, after notice and hearing, has entered an Order which has not been stayed, ordering forfeiture of Letter of Credit No. _____ in accordance with applicable law. Proceeds of this drawing will be utilized in full to pay the expenses relating to the reclamation liability, together with the costs of collection, including attorneys fees, for the _____ (mine), _____ (mine permit no.).

The Utah Division of Oil, Gas, and Mining

By: _____
Authorized Signature

Date: _____